

Advisory Opinion

IECDB AO 2006-05

March 30, 2006

The Honorable Thomas E. Law
Chairman
Poweshiek County Board of Supervisors
PO Box 57
Montezuma, Iowa 50171

Dear Chairman Law:

This opinion is in response to your letter of March 9, 2006, requesting an opinion from the Iowa Ethics and Campaign Disclosure Board pursuant to Iowa Code section 68B.32A(11) and Board rule 351—1.2. We note at the outset that the Board's jurisdiction is limited to the application of Iowa Code chapters 68A and 68B, Iowa Code section 8.7, and rules in Iowa Administrative Code chapter 351. Advice in a Board opinion, if followed, constitutes a defense to a subsequent complaint based on the same facts and circumstances.

FACTUAL STATEMENT:

We understand you request this opinion in your capacity as the Chairman of the Poweshiek County Board of Supervisors. You advise us that an employee of the Poweshiek County Sheriff's Office will also be simultaneously employed by the county's E-911 Service Board. The Board of Supervisors is concerned with compliance of Iowa Code chapters 68B, 314, and 331.

QUESTION:

Is it permissible for a Sheriff's Office employee to be simultaneously employed with the County's E-911 Service Board?

OPINION:

We first reiterate that this opinion speaks only to the application of the ethics laws in Iowa Code chapter 68B to your question. The Board does not have jurisdiction to render advice on Iowa Code chapters 314 or 331.

Nothing in the ethics laws expressly prohibits a person from being simultaneously employed by two government entities. Iowa Code section 68B.2A does prohibit a government employee from engaging in any "outside employment or activity which is in

conflict with the person's official duties and responsibilities." The Board has consistently held that "outside employment" encompasses being employed by another governmental entity. Thus, there can be a conflict of interest when a government employee simultaneously holds two government positions.

Iowa Code section 68B.2A sets out three "situations in which an unacceptable conflict shall be deemed to exist." We summarize each situation and how they apply to your question below:

1. The outside employment or activity involves the use of government resources. Therefore, the employee could not use resources of one of the governmental entities in order to do work for the other governmental entity. For example, time spent at the Sheriff's Office would have to be devoted to doing the work of the Sheriff's Office and not work for the E-911 Service Board.
2. The outside employment or activity involves the receipt of compensation for the performance of any act that the person would be required or expected to perform as part of the person's regular duties or during the hours of service or work. Thus, the employee could not receive compensation for both employments if the work done for one governmental entity is work that the employee is to be doing or is expected to be doing for the other governmental entity.
3. The outside employment or activity is subject to the official control, inspection, review, audit, or enforcement authority of the person during the performance of official duties. The employee would have to abstain from engaging in any official acts on behalf of one of the governmental entities involving the other governmental entity. For example, if the Sheriff's Office was to investigate the E-911 Service Board, the employee could not participate in the investigation.

Thus, so long as the employee of the Sheriff's Office does not engage in any conduct that leads to a conflict of interest under Iowa Code section 68B.2A, nothing in the ethics laws of Iowa Code chapter 68B prohibits the situation you describe.

In closing, if you have a specific factual scenario that might trigger one of these situations, we invite you to submit an additional opinion request.

BY DIRECTION AND VOTE OF THE BOARD

James Albert, Board Chair
Janet Carl, Vice Chair
Gerald Sullivan
Betsy Roe
John Walsh
Patricia Harper

Submitted by: W. Charles Smithson, Board Legal Counsel

